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MICHAEL RODAK, JR., C

IN THE

Supreme Court of the United States

Nos. 72-549, 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

CAROLYN BRADLEY, ET AL.,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

STEPHEN J. POLLAK
RICHARD M. SHARP
734 Fifteenth Street, N.W.
Washington, D.C. 20005

DAVID RUBIN
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

Attorneys for Amicus Curiae, National Education Association

Counsel:
SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D.C. 20005

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BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

INTEREST OF THE NATIONAL EDUCATION ASSOCIATION

The National Education Association (hereinafter NEA)[1] is an independent, voluntary organization of edu-

[1] Counsel for the parties have consented to the filing of this brief. Letters of consent have been filed with the Clerk of the Court pursuant to Rule 42(2) of the Rules of this Court.

cators, open to all professional teachers and administrators. It presently has over one million one hundred thousand regular members, and is the largest professional organization in the nation. First organized in 1857, NEA was chartered by a special act of Congress in 1906. Its statutory purpose is "to elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States" (34 Stat. 805).

Both the NEA and its members have a deep interest in achieving and assuring quality education and equality of educational opportunity for the children of all races. In pursuit of this goal, the NEA has participated as amicus curiae before this Court in numerous cases involving the provision of equal educational opportunity. *E.g.*, *Keyes* v. *School District No. 1, Denver, Colorado*, No. 71-507; *San Antonio School District* v. *Rodriguez*, No. 71-1332; *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969). In the instant case, the NEA, with the consent of all parties, filed a brief amicus curiae in the court below.

The case at bar involves important questions regarding the fulfillment of the mandate of *Brown* v. *Board of Education*, 347 U.S. 483, (1954), for the provision of equal education for black children in an urban metropolitan community within a State that maintained a dual school system. It requires this Court to consider whether the district court acted properly and within its equitable powers in ordering consolidation of school districts as a remedy for the continued racial identity of the Richmond schools. As the principal association of educators in this country, the NEA can draw upon a breadth of experience to evaluate for this Court the educational effects of consolidating school districts and the reasonableness of the district court's order.

ARGUMENT

I

INTRODUCTION AND SUMMARY

The State of Virginia and its political subdivisions—the hool districts of Richmond, Chesterfield and Henrico—ve been under a constitutional mandate for 17 years desegregate the schools. Notwithstanding this mandate, chmond's schools today are 70 per cent black and the unties' schools are 90 per cent white. This interdistrict gregation in the Richmond metropolitan area is the oduct of a multiplicity of forces, including discrimina-y policies and practices of private individuals and rporations serving to exclude blacks from the counties d to confine them to the city. A major contributing rce has been a pattern of discriminatory policies and actices by state and local school officials and other blic authorities in Virginia.

The record reflects that state and local officials have ade copious use of their powers to delay and obstruct segregation in the schools within each subdivision. rough delay, massive resistance and other tactics, these icials not only successfully prevented intradistrict de-gregation, but also materially furthered the interdistrict segregation which existed when affirmative measures to segregate within each subdivision finally were taken in sponse to HEW pressure and court order.

In 1954, the City of Richmond was majority white. e counties were blacker in their racial complexion and ore sparsely populated. At that time the possibility stable desegregation within the boundaries of Richmond ll existed: whites constituted a majority (57 per cent) the school population, inadequate housing existed in the unties to absorb any abrupt influx of large numbers of ites, and the interstate highways which today lubricate

the path of the suburban commuter had not been built. Stable desegregation within the confines of Richmond is no longer possible today, when blacks constitute 70 per cent of the school population and when the counties constitute convenient sanctuaries for whites seeking to avoid desegregation. Thus, official delay had the operative effect of facilitating resegregation, on an interdistrict basis, by the time intradistrict desegregation was at hand.

By then, demographic changes had transformed the city-county lines into racial dividers. Black children in Richmond, and their parents, teachers and the community at large, perceived the three economically and socially interrelated jurisdictions in the metropolitan area as a single community and regarded the Richmond schools as segregated institutions. The district court, in findings that were not overturned by the court of appeals, found that, as a result, black children in Richmond suffered harm at least comparable to the harm which this Court in *Brown* recognized as flowing from the segregated schools in the cases then before it.

Moreover, instead of leading the way toward compliance with the *Brown* mandate, and influencing positively the attitudes of whites and blacks towards desegregation, official conduct for 17 years constituted a negative force. It encouraged whites to believe that desegregation was to be avoided at any cost. Whites whose attitudes towards desegregation might have been favorably shaped by official compliance were taught, by official defiance, the imperative of circumvention. Among the lessons which delay and obstruction taught blacks in the city was that hostility—official as well as private—would attend their efforts to become integrated with whites. Thus, official action can fairly be said to have played a role both in stimulating the in-flow of whites to the counties and in discouraging blacks from seeking to live in the developing white suburbs.

School officials influenced the population patterns that led to interdistrict segregation in more direct ways. Initially the counties baited developing residential areas with new schools expressly designed for whites only. After the counties adopted freedom of choice, the counties built and maintained racially identifiable schools with segregated staffs. These school construction policies contributed to the development of the white havens ringing the City of Richmond. These havens, by their nature, discouraged black entry. The limited number of school facilities available for black families in the counties constituted a further deterrent to the in-migration of blacks.

Against this background, the court of appeals erred in overturning the district court's finding that official discrimination contributed substantially to interdistrict segregation in the metropolitan area, and the district court's conclusion that it had the power to remedy that segregation.

With respect to the remedy, the district court had broad equitable discretion to frame a decree which would undo the effects of the discriminatory actions and policies of the State and its subdivisions. Under the facts of this case, the court did not abuse that discretion in ordering merger of the three school systems.

NEA believes that the merger required by the district court's order has many educational advantages. It accords with the recommendations of the President's Commission on School Finance and the 1972 Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education (the Fleischmann Report). It also accords with the Virginia State Board of Education's policy of encouraging school consolidation and is consistent with the educationally desirable national trend which since 1932 has seen the

number of school districts shrink from more than 125,000 to 17,500.

Specifically, the consolidation of the three school districts would bring to the children in the Richmond metropolitan area the advantages of heterogeneous grouping of students. It would provide a broader financial base and therefore greater fiscal stability for the schools throughout the three districts. And it would afford the affected school districts the wherewithal to provide equipment and highly trained personnel for special programs that can be feasibly offered only where substantial numbers of children are involved.

II

The State and Its Subdivisions Are Responsible in Substantial Measure for the Existing Interdistrict Segregation of the Schools in the Richmond Metropolitan Area

A. The State and Its Subdivisions, by Promoting Racial Separation Through "Massive Resistance" and Delay and by Baiting Their School Districts With White and Black Schools, Contributed Materially to Interdistrict Segregation in the Richmond Metropolitan Area.

1. *Delay for 17 Years Has Foreclosed the Opportunity for Stable Desegregation Inside the City of Richmond.*

In 1954, stable desegregation might have been achieved within the city limits of Richmond. The district court found that while Richmond's school system today is identifiably black, "[t]his was not always the case." "It is so at present because in substantial part the policy of school segregation, continued to the present, contributed to pervasive housing segregation."[2] In 1954 the city's schools were 57 per cent white. Henrico was approximately 20 per cent black and Chesterfiield approximately 10 per cent black. (R.X. 62A). Moreover,

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[2] Memorandum Opinion and Order of the district court dated January 5 and 10, 1972, at page 208a of the "Appendix to Petition for Certiorari, Opinions Below and Relevant State Laws" filed by the School Board of the City of Richmond. The decisions of the courts below hereafter will be cited to this appendix as "Pet. A.," followed by the page reference. The printed appendix in this Court was not available at the time this brief was prepared. Accordingly, the record citations are to the transcript ("Tr."); plaintiff Bradley's exhibits ("P.X."); Richmond exhibits ("R.X."); Chesterfield exhibits ("C.X.") and Henrico exhibits ("H.X.").

the counties were more sparsely populated.[3] At that time housing in the counties was inadequate to readily accommodate any abrupt influx of large numbers of white families.[4]

By 1970, when the school districts had been compelled by court order and HEW pressure to act, major changes had occurred which made stable desegregation within the confines of the city impossible to achieve. In a city in which, as the district court found, black schools were perceived as inferior (Pet. A. 189a, 476a), the black proportion of the city's school population climbed from 43 to 70 per cent. And the city's black ghetto expanded to the point where it could not be desegregated in any significant measure without busing. The number of black public school students in the city rose from 15,598 to 30,097 between 1954 and 1970 (R.X. 75).

In addition, the counties became more accessible. Interstate superhighways were built to smooth and shorten the duration of the suburban commuter's trip to and from his place of work in Richmond.[5] Substantial housing was constructed to accommodate the growing suburban movement.[6] As the county populations grew,[7] the counties

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[3] Between 1950 and 1970, the total population of the two counties increased by 136 per cent. See note 7, *infra*.

[4] See note 6, *infra*.

[5] The Federal Aid Highway Act of 1956, 23 U.S.C. § 102 *et seq.*, with its provision for federal grants amounting to 90 per cent of the construction costs, provided the impetus for the interstate highway system.

[6] Between 1951 and 1971 inclusively, Henrico opened 674 subdivisions comprised of 21,199 lots (H.X. 24). In this period Chesterfield opened 426 subdivisions comprised of 14,199 lots (C.X. 21).

[7] Henrico's population between 1950 and 1970 increased from 57,340 to 154,364 or a growth of 169 per cent. Chesterfield grew from 40,400 to 76,855, a growth of 90 per cent, which does not take into account the loss of 44,000 persons through annexation by Richmond in 1970 (H.X. 21; Tr. A-24; Pet. A. 497a).

became whiter in their racial complexion. The black proportion of the school population diminished to 7.9 per cent in each county. The counties had become convenient white havens. (Pet. A. 418a). By 1970, the Richmond schools had become demographically unstable. In 1970 and 1971, some 39 per cent of the white students in the Richmond schools left the system (Pet. A. 237a).

Against this background, delay had the operative effect of giving whites time to relocate before desegregation was decreed. Thus, delay had an impact similar to the "free transfer" rule and Virginia's tuition grant program: its effect was "to allow *resegregation*." See *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 459 (1968) (Italics by Court). See also Pet. A. 218a, 321a.

In addition, delay aggravated the problem of eliminating the racial identity of Richmond's black schools. In 1954, desegregation of the Richmond schools would have resulted in a less drastic differentiation between the racial complexion of the schools in the city and the county than was possible by 1970. By that year, when desegregation of the Richmond schools was decreed, those schools had become heavily black and the county schools whiter. The city border had become a racial divider. Eight blocks from Richmond's John Marshall High School (78 per cent black), Henrico operated Henrico High School (96.1 per cent white) (Pet. A. 429a). Richmond was operating an 88 per cent black high school (*Id.*) inside Henrico County whose schools on the average were 92.1 per cent white (R.X. 77). One half-mile from the Richmond line beyond which the schools averaged 70 per cent black, Chesterfiield operated the 95 per cent white Manchester High School (Pet. A. 524a).

Delay in the face of these demographic changes thus cut off the opportunity that existed in 1954 for black children in Richmond to enjoy the benefits of a desegre-

gated education in the city system. By 1970, black pupils and their parents, teachers and the community at large perceived their schools—in the context of the economically and socially interrelated metropolitan community[8]—as segregated institutions. On the basis of achievement data and expert testimony the lower court concluded that the assignment of "a great majority of the black children . . . in 70% or more black schools, at a time when 90% white schools are operated just across the line, has the same impact upon self-perception and consequent effect upon academic achievement as that of official segregation as it existed in 1954" (Pet. A. 478a).[9] As the district court suggested, the damage to the black children about which this Court spoke in *Brown* v. *Board of Education* "may now have the additional negative component of perception by blacks that the law has spoken and the situation is the same" (Pet. A. 474a). In sum, as the district court found, "the children of the three areas

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[8] The briefs of the petitioners set forth the evidence underpinning the fact that the counties and the city now form a single metropolitan community. In this connection see also Carolyn Bradley's Petition for Certiorari in this case, pp. 15-21.

[9] As the district court noted, "Schools the racial composition of which departs significantly from the community parity . . . are perceived by parents, teachers, administrators, public officials, pupils, and the community at large as facilities designed and operated for one race or the other" (Pet. A. 188). That court also found that "the social psychology of the Richmond area is such that schools with black enrollments substantially disproportionate from the racial composition of the area will be perceived by the community as bearing a stigma of inferiority. Black pupils of such schools will achieve less by reason of such perceptions by the community at large, their teachers, their parents, and themselves. Perceptions affect expectations and the expectations of such persons have a notable impact upon the achievement of individual students." (Pet. A. 476a). The testimony showed and the court found that "[s]chool segregation . . . has a very negative impact upon self-perceptions, and consequently development, of black children." This type of segregation "affects motivation" and instills a "sense of containment, of being confined by a hostile majority, [and] imposes a sense of limited possibilities and decreases ambition." (Pet. A. 472a-73a).

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involved cannot, under existing conditions and as the school divisions are now operated, receive an equal education" (Pet. A. 478a).

2. *The State's Policies of Massive Resistance and Delay Perpetuated and Reinforced Racism.*

The decision in *Brown* afforded State and local school officials in Virginia a unique opportunity to encourage residential integregation and racial harmony. As a result of *Brown*, the State and each of the three school subdivisions were under the duty to dismantle the dual system and extirpate the racial identification of their schools. In the post-*Brown* period the counties—and to a lesser extent the city—were adding large numbers of new homes and residents.[10] Efforts by school officials to comply with *Brown* by locating schools and designing attendance policies in such a way as to further school desegregation would have had a significant impact upon the racial composition of the newly developing residential communities in the counties and transitional residential areas in the city. As this court observed in *Swann*: "People gravitate toward school facilities, just as schools are located in response to the needs of the people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner city neighborhoods." *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 20-21 (1971).

Moreover, these officials had the opportunity to shape affirmatively the attitudes and actions of public officials and private citizens. Merely by providing a desegregated education, as *Brown* required, school officials could have influenced positively the racial attitudes and the subsequent residential choices and options of thousands of school children (now adults and parents) who were

[10] See discussion *supra*, p. 8.

graduated from schools in the Richmond metropolitan area in the 17-year period after *Brown*. As this Court noted in *Swann* v. *Charlotte-Mecklenburg Board of Education, supra*, 402 U.S. at 22-23, "desegregation of schools ultimately will have impact on other forms of discrimination." [11] A report of the U.S. Commission on Civil Rights —based on an extensive study prepared by the National Opinion Research Center at the University of Chicago— concluded that whites who attended desegregated schools expressed greater willingness to reside in an interracial neighborhood and to have their children attend desegregated schools and looked more favorably upon fair employment practice laws than whites who attended racially isolated schools. Similarly, blacks who attended desegregated schools were more likely than blacks who attended racially isolated schools to live in desegregated neighborhoods and to send their children to desegregated schools.[12]

Instead of desegregating, however, state and local officials rejected the responsibilities of leadership that *Brown* thrust upon them. By their long delay, they succeeded in preserving school segregation for 17 years. The effects were the very antithesis of those which might have been achieved through school desegregation. As the district court found:

> "Attitudes of whites and blacks, employment, income levels, housing segregation, and the direction of urban growth are all permanently shaped by school segregation. To the extent that segregation endured past 1954, it fostered these effects by reason of the defendants' defiance of the announced constitutional mandate." (Pet. A. 237a).

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[11] See the testimony of Dr. Robert Lucas relating to the effective consolidation of the all-black high school with schools in another district serving Hamilton County, Ohio, which was 90 per cent white (Tr. R-21, 27, 35).

[12] U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* Vol. 1, pp. 111-113; Vol. 2, pp. 211-241.

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Official defiance of *Brown* went well beyond inaction. The State spearheaded "massive resistance" to desegregation and then substituted other devices—including the Pupil Placement Law, the tuition grant program and "freedom of choice"—which have had the purpose or effect of evading the *Brown* mandate. Local officials too assumed an affirmative role in encouraging and stimulating resistance. As late as 1971, the Chairman of the Chesterfield County Board of Supervisors commended to his citizens "a revolt in the form of a school boycott, separate private school system, or even freedom of choice school assignments and letting federal troops see what they can do about it, rather than integrate the schools in Chesterfield County with the City of Richmond" (Pet. A. 412a).

As this Court declared four years ago, "This deliberate perpetuation of the unconstitutional system can only have compounded" the system's harm. *Green* v. *County School Board*, 391 U.S. 430, 438 (1968). Thus, the trial court found that, against the background of segregation existing in 1954, "the systematic obstruction of the rights enunciated in *Brown*, and the deliberate policy to perpetuate segregation through numerous techniques of circumvention, have in combination made clear to white and black members of the community the favor and satisfaction with which the State power views the continued segregation of schools" (Pet. A. 189a). This official conduct could only have encouraged white antipathy toward integregation with blacks and conveyed to blacks a message that official hostility would attend their efforts to seek integration with whites. By encouraging whites to avoid integration and discouraging blacks from seeking it, official policies stimulated and reinforced segregated residential patterns in the metropolitan area.

3. *Affirmative Acts of State and Local School Officials Have Contributed to the Concentration of Blacks in the Richmond School District.*

The state and local authorities, as we have demonstrated in the preceding sections, made stable and effective desegregation in Richmond impossible by their massive resistance and delay in the face of major demographic changes in the metropolitan community. Here we show that state and local school officials, by affirmative acts in addition to massive resistance, influenced the pattern of residential segregation in the Richmond metropolitan area.

This Court has recognized that "People gravitate toward school facilities. . . ." *Swann, supra*, 402 U.S. at 20. When those facilities are designated for whites, they draw white families into the neighboring community. When facilities are designated for blacks, they draw black families. Between 1954 and 1971, Henrico and Chesterfield Counties carried out a massive program of school construction. Henrico built 31 new schools and expanded 36 others (Tr. N-109; H.X. 29).[13] Chesterfield built 33 new schools in the past 20 years (Tr. N-201).[14] In both counties these schools were built and operated as racially identifiable schools with racially identifiable student bodies and faculties (Pet. A. 200a; see R.X. 92; C.X. 31). From 1954 to at least 1962, all schools constructed in the counties were expressly designed to serve blacks or whites (Pet. A. 287a).[15] The district court found that the school construction and attendance policies had "contributed substantially to the current segregated conditions" with "[t]he longer term impact . . . [being] the

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[13] In 1970-71 Henrico was operating 39 schools (Pet. A, 527-29a).

[14] In 1970-71 Chesterfield was operating 37 schools (Pet. A, 524a-26a).

[15] Twenty-three of the 31 new schools in Henrico were built during this period (H.X. 29).

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exaggeration of the racial disproportion between the city and the two neighboring counties" (Pet. A. 200a).

Apart from the immediate segregatory impact of the county programs of constructing racially identifiable schools, the maintenance and operation of such schools created substantial disincentives for blacks to move into the counties. In maintaining the dual system, the counties signalled to the blacks of Richmond, as well as potential black entrants from other areas, that their children would not obtain an integrated education in county schools because those schools were to remain segregated.

The record reflects the obstacles placed in the way of black children who had the courage to seek entry into a white school in the counties. During the era of the Pupil Placement Law, a black child seeking to attend a white school across the street from his home in Chesterfield County was required to request a hearing from the Pupil Placement Board, which in turn would advertise the proposed hearing in the Richmond Times Dispatch once a week for two consecutive weeks. The child and his parents were then to appear at the appointed time to "present their case" (Tr. 0-12, 13).

During the era of "freedom of choice," the counties kept black teachers out of the white schools, thereby discouraging blacks from entering (Pet. A. 524a-29a). The limited school facilities available to black families with high school children also served as disincentives. Chesterfield operated a single all-black high school through 1969-70, and Henrico operated one such high school through 1968-69. At the same time Henrico operated six identifiably white schools and Chesterfield seven. (Pet. A. 524a-27a). Since both counties cover substantial geographical areas,[16] the difference in available facilities meant that

[16] According to the 1970 Census, Henrico County covered 244 square miles and Chesterfield County, 445 square miles (Pet. A. 402a).

whites could choose from among many locations and still reside in close proximity to a high school. Blacks, on the other hand, had a narrower range of housing opportunities if their children were to be conveniently located with respect to the single high school operated for them.

Furthermore, the counties offered to the whites of Richmond and to in-migrating whites a wider range of all-white (98 to 100 per cent white) neighborhood schools than were available in Richmond. For example, as late as the 1969-70 school year, Richmond had one high school, one middle school and six elementary schools which were all-white (Pet. A. 530a-32a). Henrico and Chesterfield, on the other hand, offered a combined total of two all-white high schools, two all-white middle schools and twenty-two all-white elementary schools (Pet. A. 524a-532a). In effect, the counties held open to whites the opportunity to live in a variety of locations within the county boundaries with the knowledge that their children would attend a conveniently located all-white school.

The district court summed up the radiating effects of the discriminatory actions and policies of state and local school officials when considered in combination with the restricted housing options available to blacks (Pet. A. 206a):

> "The interdependency of housing and school segregation is fully established by the record. Schools were planned with an eye to separate racial occupancy and opened as such, with zone and division lines imposed upon segregated housing patterns. The accommodation of expanding pupil population in new schools paved the way for new urban growth. New residents in turn were governed in their choice of housing by established patterns of residential segregation. They also were attracted to one or another

zone by the opportunity to avoid school desegregation. Blacks new to the area and young black adults native to Richmond in the meanwhile were more restricted in choice of housing sites. Overall, the area's population expanded, and over time black residents, with fewer options so far as housing was concerned, comprised a greater and greater proportion of the city's residents, while the area's whites occupied the suburban counties."

B. Other Forms of Public and Private Discrimination Also Contributed to the Concentration of Blacks in the Richmond School District.

State and local school authorities are not the only officials who bear responsibility for the concentration of blacks in the Richmond School District.

The district court found, for example, that all public housing projects except one in the Richmond metropolitan area are principally black and are located in predominantly black areas of Richmond.[17] While Chesterfield and Henrico are empowered to create public housing authorities and establish public housing, they have failed to do so,[18] notwithstanding the fact that 11 per cent of the housing units in each jurisdiction are substandard (Pet. A. 495a-496a). "Both counties have stated their opposition to public housing within their borders" (*id.* at 496a). In addition, both counties have blocked the operation of the federal rent supplement program—a companion to public housing—by failing to take the steps required to qualify (*id.* at 493a; see Tr. E-35-42). Similarly, large-lot zoning in the counties has made it necessary for less

[17] Hillside Court, a public housing project in Richmond, was built for whites (Pet. A. 495a).

[18] Section 36-4 of the Code of Virginia creates a housing authority for each city and county, leaving it to the local governing body to actually bring such authority into operation. See *Mumpower* v. *Housing Authority*, 176 Va. 426, 11 S.E.2d 732, 739 (1940).

affluent blacks to seek zoning variances in order to build there (Tr. L-195, 197; Pet. A. 513a).

The story has been the same in public employment. The evidence shows that there are 635 administrative (white collar) positions in the Henrico County Government. Of these, 615, or 98.6 per cent, are held by whites (P.X. 107). Seventy of the jobs are appointive and only one black, who was appointed in 1970, holds such a position (*id.*). In Chesterfield there are 293 administrative jobs. Of these, 286, or 97.62 per cent, are filled by whites (P.X. 107B). The district court found that "public employment in Henrico and Chesterfield Counties over the years has been available almost exclusively to whites" (Pet. A. 510a). This discrimination has not only foreclosed important employment opportunities for blacks, but has also established a power structure, ranging from the police through the county boards of supervisors, that is likely to be regarded as uncongenial and unresponsive to black residents.

Public transportation policies have constituted another spoke in the wheel of discrimination. "Very scanty" public transportation within the large geographical area of Chesterfield and between Chesterfield and Richmond makes jobs in the county less accessible to poor persons living in Richmond or in the county, and jobs in Richmond less accessible to poor persons living in the county (Pet. A. 514). This has the greatest impact on blacks who make up the greatest percentage of the poor in the Richmond area (Pet. A. 503a).

In addition, state imposed restrictions on interracial contacts have served to reduce the mobility and opportunities of blacks and to intensify clustering by race. During the period of massive resistance and in some cases even beyond that period, segregatory laws remained in force notwithstanding the spate of decisions by this

Court striking down all forms of official segregation.[19] Virginia's laws required segregation in any place of public assemblage, segregation of fraternal benefit societies, segregation on all public transportation,[20] segregation in virtually every type of institution operated by the State, and separate treatment, according to race, by taxing and polling authorities. Interracial marriage was criminal and void.[21] Organizations advocating racial integration were required to register with the state.[22]

The evidence also shows that brokers,[23] title insurance companies,[24] and newspapers,[25] all had a hand in promot-

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[19] See *Watson* v. *Memphis*, 373 U.S. 526 (1963), and cases cited therein at 530 n.2.

[20] *Boynton* v. *Virginia*, 364 U.S. 454 (1960).

[21] *Loving* v. *Virginia*, 388 U.S. 1 (1967).

[22] *NAACP* v. *Button*, 371 U.S. 415 (1963). See Code of Va. § 18.1-356 (repealed 1970); § 38.1-597 (repealed 1968); §§ 56-326 to 328 (repealed 1970); §§ 56-390 to 404 (repealed 1970); § 22-221 (repealed 1971); §§ 23-10 to 12 (repealed 1971); § 20-101; § 58-880 (repealed 1970); § 24-120 (repealed 1970); §§ 20-50 to 60 (repealed 1968); § 18.1-381. See also "A Compendium of Racially Discriminatory Laws of the State of Virginia." (P.X. 114).

[23] The district court found, *inter alia*, that although the membership requirements for the "Richmond Board of Realtors, a private group of real estate brokers, have no relation to race, there has been and still may be, according to uncontradicted testimony, a clause in the code of ethics of the realtors to the effect that one could not disturb the white community by selling property therein to blacks, although certain areas of the city would be offered to non-whites by all realtors once the board of realtors determined that an area was one of transition and a home had been sold to blacks in a particular block, and that block was determined by the board to have been 'broken'" (Pet. A. 171a-72a).

[24] On November 7, 1969, the Civil Rights Division of the U.S. Department of Justice requested Lawyers Title Company of Richmond to terminate its policy of requiring that racial restrictions continue to be included on documents of title. (Pet. A. 515a). See *Mayers* v. *Ridley*, 465 F.2d 630 (D.C. Cir. 1972).

[25] On March 6, 1970, the Civil Rights Division of the U.S. Department of Justice requested the Richmond Times Dispatch and the

ing residential segregation in the growth period after *Brown* (Pet. A. 506a-507a, 514, 515a).[26] It is only reasonable to conclude that the State's massive resistance posture and its pervasive segregation laws promoted and reinforced this private discrimination that contributed to the interdistrict segregation in the Richmond metropolitan area.

C. The Court of Appeals Had No Foundation for Overturning the District Court's Conclusion That It Had the Power To Order a Remedy for the Interdistrict Segregation in the Richmond Metropolitan Area.

The facts adduced at trial, as we have shown, warrant the district court's conclusions that "[s]chool construction policy has constributed substantially to the current segregated conditions" (Pet. A. 200a) and that "officials of the City of Richmond, Counties of Chesterfield and Henrico, as well as the State of Virginia, have by their actions directly contributed to the continuing existence of the dual school system which now exists in the metropolitan area of Richmond" (Pet. A. 379a). The court of appeals "accept[ed]" findings that "there has been state (also federal) action tending to perpetuate apartheid of the races in the ghetto patterns throughout the city,

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Richmond News Leader to discontinue use of a separate column at the beginning of the classified advertisements for homes for sale which was commonly understood as indicating houses for Negroes (P.X. 42A). This policy was discontinued as of February 1, 1971 (P.X. 42C).

[26] Lawyers Title Insurance Company files show that in Chesterfield 37 subdivisions, accounting for 3,323 lots, had restrictive covenants (C.X. 37). In Henrico 78 subdivisions, accounting for 14,154 lots, were burdened with restrictive covenants (Tr. Q-6; Pet. A. 509a.). The district court found that the Federal Housing Authority encouraged and perpetuated housing segregation until at least 1947 when it removed "the caveats in its underwriters' manual advising appraisers about the dangers of 'inharmonious racial groups'" (Pet. A. 488a-89a).

and that there has been state action within the adjoining counties also tending to restrict and control the housing location of black residents" (Pet. A. 572a). The court of appeals "agree[d]" that "there has been some inaction, (*e.g.*, non-participation in construction of low income housing) by the counties here which may have restricted the access of blacks to residences in these counties" (*id.* at 574a), and that "[f]ormer FHA policies and the use of racially restrictive covenants have doubtless had an impact on residential housing patterns within the city and the counties" (*id.*).

Notwithstanding its acceptance of these district court findings, the court of appeals reversed. It did so, apparently, on two grounds: (1) that "neither the record nor the opinion of the district court even suggests that there was ever joint interaction between any two of the units involved (or by higher state officers) for the purpose of keeping one unit relatively white by confining blacks to another" (id. at 572a); and (2) that it was not established that the racial composition of Richmond and the counties is the result of invidious state action (*id.* at 582a).

We show below that the court erred on both counts.

1. ***The Court of Appeals Erred in Holding That the Power To Remedy Interdistrict Segregation Depends Upon a Showing of Joint Interaction by Two Arms of the State for a Discriminatory Purpose.***

The court of appeals erred in brushing aside the district court's findings for want of a showing that "there was ever joint interaction between any two units of the units involved (or by higher state officers) for the purpose of keeping one unit relatively white by confining blacks to another" (Pet. A. 572a). That approach is inconsistent with the Fourteenth Amendment.

To the extent that the court of appeals was holding that a purpose to cause interdistrict segregation was essential to any constitutional violation, this Court's decision in *Wright* v. *Council of City of Emporia*, 407 U.S. 451 (1972)—decided subsequent to the court of appeals decision below—provides a complete answer. In *Wright* this Court held that the district court properly focused on the impermissible discriminatory effect of a city's decision to secede from a school district, stating that "[t]he existence of a permissible purpose cannot sustain an action that has an impermissible effect." 407 U.S. 451, 462.

To the extent that the court of appeals was holding that official discrimination having interdistrict segregatory effects must be joint interaction between districts (or between two state officials) before it is remediable, the court of appeals also erred. "[T]he prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see *Virginia* v. *Rives*, 100 U.S. 313; *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230; *Shelley* v. *Kraemer*, 334 U.S. 1; or whatever the guise in which it is taken, see *Derrington* v. *Plummer*, 240 F.2d 922; *Department of Conservation and Development* v. *Tate*, 231 F.2d 615." *Cooper* v. *Aaron*, 358 U.S. 1, 17 (1958). The Fourteenth Amendment does not require "joint interaction" between agents of the State before the effects of discriminatory actions of the State or its agents can be remedied.[27] We know of no reason or authority to support the view that where effects of this type stem from

[27] Local school officials are only derivatively subject to the Fourteenth Amendment. "From the point of view of the Fourteenth Amendment, they stand in this litigation as agents of the State." *Cooper* v. *Aaron*, 358 U.S. 1, 16 (1958). See also *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Iowa-Des Moines Bank* v. *Bennett*, 284 U.S. 239, 244-45 (1931).

independent acts of discrimination, they are exempt from the reach of the Fourteenth Amendment and can be perpetrated with impunity. Such an exemption would be inconsistent with this Court's ruling that in a desegregation case, the district court " 'has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past. . . .' *Louisiana* v. *United States*, 380 U.S. 145, 154." *Green* v. *County School Board*, 391 U.S. 430, 438, n. 4 (1968).

2. *The Court of Appeals Had No Basis for Overturning the District Court's Finding That Official Discrimination Contributed Substantially to Interdistrict Segregation in the Metropolitan Area.*

The court of appeals expressly approved many of the district court's findings of invidious official discrimination in the Richmond metropolitan area. That court, however, ruled against plaintiffs on the ground that they had failed to establish that this discrimination was the cause of the racial composition of Richmond and the counties (Pet. A. 582a-83a). The court of appeals, we submit, had no foundation for overturning the district court's contrary finding.

a. The court of appeals ruled that if the trial judge concluded that the "counties were . . . keeping blacks in Richmond schools while allowing whites to flee to relative white sanctuaries . . .," the facts do not support his conclusion. (Pet. A. 573a). In support of its ruling, the court of appeals relied upon defendants' survey of the number of black and white children enrolled in the county systems in the spring of the 1970-71 school year who had transferred directly from the Richmond system (*id.*).

As to blacks, the survey, if anything, serves to confirm that discriminatory official policies had an impact

on the residential movement of blacks. As to whites, the survey is incomplete and inconclusive.

With regard to the impact on blacks, the survey shows that during the preceding decade only 532 black children transferred directly from Richmond schools to Henrico schools and that, in the preceding 12 years, only 36 black school children transferred directly from Richmond to Chesterfield (*id.*). The study does not deal in any way with 105,764 blacks living in Richmond in 1970 (R.X. 57A), including 30,097 black children in the Richmond schools (R.X. 75). The survey does not bear in any material way on the confining effect that official discrimination had upon these blacks in the City of Richmond.

The survey, moreover, does not negate the influence of official discrimination on the abrupt departure of 2,505 or more school children who enrolled in the Richmond schools for the 1970-71 school year but had left the system as of February 16, 1971 (Tr. N-181-182). It shows only that most of these children did not immediately land in county schools. Inasmuch as families may not have been able to relocate immediately, it is possible that many of these children spent an interim period in a private school before enrolling in county schools. Furthermore, the study was made before another 3,703 white school children left the Richmond schools in 1971-72 when Plan III took effect (Pet. A. 573a). Nor did the survey cover all the white children in county schools whose parents left Richmond while the children were of pre-school age. These children may well constitute a substantial number.

The discriminatory effects of official policies were not confined, as the court of appeals seems to suggest, to the impact of those policies on the residential choices of blacks and whites living in the metropolitan area. Rather, those policies also must have influenced white and blacks

entering the metropolitan area from outside or considering such entry.

The survey takes no account of such effects. It does not indicate the number of blacks who would have moved into the counties but for the discriminatory official policies.[28] Nor does it measure the effects of those policies on the large numbers of whites living outside the metropolitan area who chose to relocate in the white counties rather than the city.[29]

In short, the survey did not cover major population groups—blacks in the center city and newcomers of both races—who constitute the vast majority of the area's population. It failed to establish that the large number of whites who left the Richmond system in 1970-71 and 1971-72 did not or will not ultimately enter the county schools. Nor did it in any way deal with the motivations of persons living outside the metropolitan area who considered but decided against moving into the area. In sum, the survey did not negate the foundation for the district court's conclusion—resting on facts summarized in Section A and B of this Part II of our brief—that official discriminatory policies were in substantial measure responsible for the area's interdistrict segregation.

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[28] As the district court found, based upon the testimony of expert witnesses: ". . . it is clear that non-economic causes lie behind at least a very substantial amount of the segregation. . . . Dr. Tauber, and the Court, are led to the conclusion that publicly and privately enforced discrimination accounts for the remainder." (Pet. A. 480a-481a). "With respect to persons moving into a community as new residents. . . . Dr. Tauber stated, and the Court finds, that such people are very much governed in their decision upon housing sites by existing patterns of customs and restrictions" (Pet. A. 482a). "Dr. Sloane stated as well, and the Court finds, that existing patterns of segregation substantially influence the choice of housing site by a new entrant into the community" (Pet. A. 491a).

[29] The counties, which are now more than 91.6 per cent white, experienced a combined population increase of 136 per cent between 1950 and 1970 (R.X. 57A).

b. The record showed increasing segregation in the metropolitan area and official discrimination limiting the opportunities of blacks for schooling, housing and employment outside the center city. Common sense dictates that on this record the district court correctly concluded that such discrimination contributed materially to the existing racial separation in the Richmond metropolitan area. Where the plaintiffs have shown that racial discrimination has been pervasive at every tier and branch of government, and have demonstrated that such official discrimination has the effect, or even the potential effect, of contributing substantially to interdistrict school segregation, it is unreasonable to require the plaintiffs to sort out and identify the extent to which such discrimination has contributed to that segregated condition. The proper approach in such a case is that taken by this Court in *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1 (1971). There, this Court held, in an intradistrict case, that there is "a presumption against schools that are substantially disproportionate in their racial composition," and that the trial court "should scrutinize such schools," and place "the burden upon the school authorities . . . to satisfy the court that . . . [the racial identity of the schools] is not the result of present or past discriminatory action on their part." *Id.* at 26. In short, the defendants must "disentangle the consequences for which [they are] chargeable" or bear responsibility for the whole. *NLRB* v. *Remington Rand, Inc.*, 94 F.2d 862, 872 (2d Cir. 1938), *cert. denied*, 304 U.S. 576 (1938).

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III

The District Court's Order Requiring Merger of the Three School Districts Was an Appropriate Exercise of Its Equitable Discretion To Remedy the Constitutional Violation

In the case at bar, the district court ordered merger of three school districts, following the state law to the maximum extent possible.[30] This order is based upon substantial evidence, indeed compelling evidence, that only an interdistrict remedy could "eliminate from the public schools all vestiges of state-imposed segregation." *Swann*, *supra* 402 U.S. at 15. It is further supported by evidence that the school districts involved are constituent parts of a single metropolitan community.[31] So too, the evidence shows that in the past there had been extensive interdistrict cooperation and even school district consolidation aimed sometimes at maintaining the dual system in Virginia and on other occasions at achieving legitimate educational objectives.[32] Thus, the district court's remedy is essentially co-extensive with techniques the

[30] In 1970 the State Legislature, aware that this case was pending before the district court, enacted legislation conditioning the State Board of Education's power to establish appropriate school divisions and to create a single school division encompassing more than one school district. Under the new enactment, all such consolidations must be ratified by the school boards and governing political bodies of the political subdivisions affected. See 9 Va. Code § 22-30 (Cum. Supp. 1971); Va. Const. Art. VIII, § 5(a), as revised (1970). See also Judge Winter's dissenting opinion (Pet. A. 586-587a, n.3) and the district court's findings (*id.* at 227a-228a). Judge Winter points out that "in all respects the order of the district court complied with the provisions of existing state law, save only that of the requirement of consent of the school boards and governing bodies of all of the affected political subdivisons" (*id.* at 587a, n.3).

[31] See note 8, *supra*.

[32] Pet. A. 193a-195a; 352a-356a; 360a-364a.

State has used to foster segregation and to pursue legitimate educational objectives. These matters, we understand, are being treated fully in the briefs of the petitioners, and accordingly will not be discussed further here.

In this section, we show that the merger required by the district court's order has many educational advantages. It is in accord with the recommendations of the President's Commission on School Finance and the Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education (the Fleischmann Report). It is also in accord with the State Board of Education's policy of encouraging school consolidations (Pet. A. 274a).

A. Background.

A "distinctive feature" of American education in the past has been the degree of decentralization that has prevailed: "No other nation has so decentralized the administration of its schools."[33] During the 19th century, when the nation was predominantly rural, most school districts simply defined the area served by a single school. President's Commission on School Finance, *Schools, People & Money: The Need for Educational Reform*, p. 68 (March 3, 1972). In recent times, however, educators have sought to draw school district lines in a manner that will increase the quality of education in addition to defining the service area of a school system. Today we recognize that "the size and shape of school districts often affect the quality of the education they deliver to their children." *President's Commission, supra*, p. 68. And we now recognize that there are substantial educational and

[33] National Committee for Support of the Public Schools, "The Reorganization of Local School Districts" (Fact Sheet) (June 1967).

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economic advantages to be derived from the merger and consolidation of school districts. As the President's Commission on School Finance found (*id.*):

> "In recent years, educators have sought and often achieved redesign of school district boundaries to achieve educational objectives. Small districts were combined to produce larger ones so that administration would be more efficient. Districts were also made larger to allow them to support large high schools that could offer a wider range of courses and such high-cost facilities as laboratories and swimming pools. Big cities often put all their schools into single districts."

Thus, since 1932 there has been a dramatic change in the number and size of school districts. In 1932 there were more than 125,000 school districts.[34] Today there are only 17,500 school districts. *President's Commission, supra*, p. xix.

The consolidation of school districts throughout this country has not been limited to rural school systems. While those systems have much to gain through merger, many urban systems, including Charlotte and Winston-Salem, North Carolina, and Nashville, Tennessee, have consolidated with outlying areas.

The school district established by the court below would encompass an area 752 square miles and have an enrollment of 104,000 students (Pet. A. 402a, 430a).[35] In

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[34] American Association of School Administrators, *School District Organization*, p. 1 (1962).

[35] In Virginia many, but not all school districts, are coterminous with a political subdivision such as a county or city. The State Board of Education favors consolidation of school systems (Pet. A. 274a) and, in the past, 28 school divisions have served more than one political unit (Pet. A. 279a). Moreover, there is no organizational reason why school districts must be coterminous with a single political subdivision. According to the Bureau of the Census, in 1967, there were 4,422 school districts each serving

terms of area the new district would be comparable to or smaller than six Virginia districts which cover more than 700 square miles (Bedford, Chatham, Charlottesville, Halifax, Harrisburg and Staunton) and would be smaller in student enrollment than the Fairfax County, Virginia, school district which presently enrolls 135,948 students. The U.S. Bureau of Census reported in 1966-67 that there were at least 577 school districts in the country having an area of 700 square miles or more. U.S. Dept. of Commerce, Bureau of the Census, *1967 Census of Governments Report on Governmental Organization* (Volume 1). The district court found that in fall 1970 there were 163 school districts having enrollments between 25,000 and 99,000 students and about 28 school districts having enrollments of more than 100,000 students (Pet. A. 432a).

B. Educational Advantages of Consolidation.

Broadly speaking, urban mergers offer important educational advantages: (1) a greater opportunity for heterogeneous grouping; (2) a greater opportunity to offer specialized programs that depend upon a large pupil population base; and (3) an opportunity for achieving a more stable tax base.

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an area with the same boundary as those of some other local government. These coterminous school systems accounted for 16.8 million pupils, or only 28 percent of all public school enrollment. The remaining 18,968 school districts, comprising 86 per cent of all independent school districts and 20 per cent of the dependent school systems, served areas that did not correspond directly to those of any other local government. The noncoterminous school systems included 3,439 classed under the heading "municipal," for which an enrollment of 16.6 million pupils was reported. Most of the "municipal" systems included an entire municipal area as well as some adjacent territory. Some embraced only a portion of a municipality. These municipal systems included 789 systems that provided school services to cities of 25,000 population or more. U.S. Department of Commerce, Bureau of the Census, *1967 Census of Governments Report on Governmental Organization* (Volume 1).

1. *Heterogeneous Grouping.* As to the first point, the President's Commission on School Finance recommends that "States reorganize their school districts to encompass within each one, wherever possible, children of diverse economic, racial and social backgrounds." In the Commission's view, heterogeneity is the first of "two prime considerations" to be taken into account in reorganizing school districts. The Commission attached great importance to this factor because, as it found, "economic or ethnic isolation of children reduces the ability of school systems to provide equal educational opportunity and quality education." *President's Commission, supra,* p. xix.

> "Research results are not yet conclusive on the effect of the socio-economic backgrounds of other students on a child's educational achievement. However, it is becoming increasingly apparent that the student-mix within a school exerts a strong influence on learning patterns of the total student body. A student body reflecting different social, economic, ethnic and cultural family backgrounds tends to improve the learning of lower achieving students.
>
> "Accordingly, the Commission concludes that the effect of the student-mix appears to be such that equal educational opportunity is enhanced in a heterogeneous student body. Moreover, such a student body better prepares all its members for productive and creative participation in a free society." *Id.* at 15.

See also Coleman, et al., *Equality of Educational Opportunity* (U.S. Office of Education) 1966; Havighurst & Levine, *Education in Metropolitan Areas* (1971), pp. 121, 250.

Similarly, the Fleischmann Commission noted that the district court's decision in this case, if affirmed, "should create greater stability in individual urban schools by curtailing the incidence of white migration to the suburbs in search of racially segregated schools." *Report of the New York State Commission on Quality, Cost and Financing of Elementary and Secondary Education,* p. 4.82

(1972). The Commission recommended that the State Legislature of New York "facilitate consolidation of school districts to achieve desegregation as well as eliminate statutory obstacles to cross-busing of children across district lines for the same purpose" and that, pending such legislative corrections, the Commissioner of Education "should begin to examine segregation as a regional problem and work out regional solutions where needed." *Id.* at p. 4.14.

So too, in the Emergency School Aid Act of 1972, Congress adopted a program for funding metropolitan area wide approaches to public schooling.[36]

2. *Special Programs.* Educators are generally agreed that, as the pupil population rises, so does the opportunity and wherewithal to provide special programs. Programs requiring expensive machinery or highly trained specialists become feasible only when there are substantial numbers of children to be served. Examples of such programs are vocational education, business training, technical training, educational television and data processing.[37] Mergers materially increase the school district's capacity to provide such programs.

These gains resulting from increased school district size are confirmed by a "Survey of Programs & Practices of Public School Systems" conducted in May 1971

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[36] Public Law 92-318, 20 U.S.C. § 1608 *et seq.* Congress sought to encourage area-wide projects "to reduce and eliminate minority group isolation," 20 U.S.C. § 1609(a)(2), and to foster the development of educational parks "of sufficient size to achieve maximum economy of scale" and an "enrollment in which a substantial proportion of the children is from educationally advantaged backgrounds and which is representative of the minority group and nonminority group children" of the districts in the Standard Metropolitan Statistical Area. 20 U.S.C. § 1609(a)(3).

[37] Speech delivered to the American Association of School Administrators on February 20-24, 1971 by its Associate Secretary, Dr. Robert M. Isenberg. See also *President's Commission*, p. 69.

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by the NEA Research Division.[38] The report of the survey shows that larger systems of 25,000 or more students, lead medium (3,000-24,999 students) and small (300-2,999 students) systems in the provisions of special programs:

Percentage of Large, Medium and Small School Systems Providing Special Programs in May 1971

	% Large	% Medium	% Small
Year Round School	3.6	0.7	0
Summer Work Developing Curriculum 1966 to 1971	62-72	37-44	13-15
After School Study Centers	44	20	12
Evening School for Potential Dropouts	50	13	5
Humanities Courses (Secondary)	85	60	49
Nongraded Organization	70	38	12
Nursery School	23	7	4
School-Job Coordination:			
Distributive Education	95	65	18
Diversified Occupation	72	35	13
Industrial Coop Training	75	47	17
Job Corps	19	10	7
Vocational Office Training	89	64	37

3. *Fiscal Stability.* In recent years educators also have been encouraging school districts in metropolitan areas to merge and consolidate as a means of achieving a stable economic base for public education. The President's School Finance Commission, like numerous others, has pointed out that "the big cities of the Nation are rapidly being left to the poor and untrained" (*President's Commission, supra*, p. xiv). Thus, the migration of the middle class

[38] Survey available from NEA Research Division.

from the central city is undermining the ability of urban school districts to pay for quality education.[39]

In 1968 the Advisory Commission on Intergovernmental Relations—a bipartisan commission of federal, state and local officials—proposed model state legislation which would metropolitanize school districts. Their stated purposes were, *inter alia*, (1) to "eliminate the accidents of local property tax geography"; (2) to "remove the possibility that industrial enclaves and local fiscal zoning will shield certain property from the legitimate burdens borne by the wider community for public schools"; and (3) to enlarge the financial base for meeting the educational needs of large numbers of "high-cost" students (i.e., students from lower socio-economic levels) located in the central city.[40]

In March 1972 the President's Commission on School Finance found that the second most important consideration in school district reorganization was creation of a district "large enough to encompass to the extent possible a distribution of wealth comparable to that of the State as a whole. This would reduce disparities and make more economical the provision of specialized educational programs." (*President's Commission, supra*, p. xix).[41]

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[39] Suburban communities are also adversely affected. Pennsylvania's State Secretary of Education reports that this migration "in many instances" renders new suburban school facilities overcrowded "almost as soon as opened." Speech of Dr. David H. Kurtzman, delivered to American Association of School Administrators, February 20-24, 1971. See also Havighurst & Levine, *supra*, pp. 138-42.

[40] Advisory Commission on Intergovernmental Relations, *State and Local Finances—Significant Features 1966 to 1969*, p. 202-1 (November 1968).

[41] Merger of the three districts is not inconsistent with community control of schools. Thus, the plan adopted by the district court provides for division of the Richmond metropolitan area system into six administrative subdivisions, each with considerable local autonomy. Subdivision directors would supervise instruction, make decisions concerning curriculum and maintain "close contact

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CONCLUSION

For the reasons set forth in the preceding pages, the National Education Association urges this Court to reverse the decision of the court of appeals and to hold (1) that the court of appeals erred in overturning the district court's findings that discriminatory actions and policies of State and local authorities contributed materially to the interdistrict segregation currently existing in the Richmond metropolitan area, and (2) that the district court did not exceed its power or abuse its discretion in ordering merger of the three districts as a remedy for the continuing effects of the official discrimination.

Respectfully submitted,

STEPHEN J. POLLAK
RICHARD M. SHARP
734 Fifteenth Street, N.W.
Washington, D.C. 20005
DAVID RUBIN
1201 Sixteenth Street, N.W.
Washington, D.C. 20036
Attorneys for Amicus Curiae
National Education Association

Of Counsel:
SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D.C. 20005

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with parents of children in their schools" (Pet. A. 431a). The plan would permit each subdivision to establish a lay-advisory school board in order to involve local residents in the decision making process. The court found that the decentralization permitted by the plan would "lead to better communication between the patrons and administrators." (*Id.*). For examples of large school systems which have provided for similar administrative decentralization and community participation, see "Decentralization and Community Involvement: A Status Report," ERS Circular No. 7 (1969).